

November 16, 2020

**VIA ECF**

Honorable Carol Bagley Amon  
United States District Judge  
United States District Court for the Eastern District of New York  
225 Cadman Plaza East  
Brooklyn, NY 11201

Re: *Bartlett v. Societe Generale de Banque au Liban SAL*, No. 19-cv-0007 (CBA)(VMS)  
(E.D.N.Y.): Response to Plaintiffs' Notice of Supplemental Authority

Dear Judge Amon:

We write on behalf of Moving Defendants<sup>1</sup> to respond to Plaintiffs' October 20, 2020, letter submitting as supplemental authority *Henkin v. Kuveyt Turk Katilim Bankasi, A.S.*, 19-cv-5394 (BMC), 2020 WL 6143654 (E.D.N.Y. Oct. 20, 2020), in which Judge Cogan denied a motion to dismiss a claim under the Justice Against Sponsors of Terrorism Act ("JASTA"). ECF No. 161. The *Henkin* decision represents a departure from Second Circuit precedent and should have no bearing on the currently pending motion to dismiss the *Bartlett* complaint. Indeed, Judge Cogan has just granted the defendant's motion to certify the decision for an interlocutory appeal. See *Henkin v. Kuveyt Turk Katilim Bankasi, A.S.*, 19-cv-5394 (BMC), ECF No. 36 (E.D.N.Y. Nov. 13, 2020) (attached as Exhibit A).

In *Linde v. Arab Bank*, the Second Circuit held that a bank cannot be held liable for aiding and abetting under JASTA unless it "was 'generally aware' that [by providing financial services] it was thereby playing a 'role' in [the terrorist organization's] violent or life-endangering activities." *Linde v. Arab Bank, PLC*, 882 F.3d 314, 329 (2d Cir. 2018). Although *Henkin* acknowledges this requirement, 2020 WL 6143654 at \*6, the decision ignores its crucial foundation: that to meet JASTA's *mens rea* requirement for aiding and abetting an *act* of international terrorism, a plaintiff must show "more than the provision of material support to a designated terrorist *organization*." *Linde*, 882 F.3d at 329 (emphasis in original). The *Henkin* court erred by holding that a JASTA claim is sufficiently pled if its allegations permit the inference that "funds from [a customer's] accounts would make their way to" an FTO. See *Henkin*, 2020 WL 6143654 at \*7. At best, such allegations suggest only that a bank's customers provided material support to an FTO, which the Second Circuit plainly held to be an insufficient basis for JASTA liability in *Linde*.

*Henkin* also departs from the Second Circuit's instructions on how the legal framework of *Halberstam v. Welch*, 705 F.2d 472 (D.C. Cir. 1983) should be applied to claims arising under JASTA. In *Linde*, the Second Circuit took *Halberstam*'s aiding and abetting standard

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<sup>1</sup> The Moving Defendants are (1) Société Générale de Banque au Liban S.A.L., (2) Fransabank S.A.L., (3) MEAB Bank s.a.l., (4) BLOM Bank S.A.L., (5) Byblos Bank S.A.L., (6) Bank Audi S.A.L., (7) Bank of Beirut S.A.L., (8) Lebanon & Gulf Bank S.A.L., (9) Banque Libano Française S.A.L., (10) Bank of Beirut and the Arab Countries S.A.L., and (11) Fenicia Bank s.a.l.

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applicable to *all* common law torts and applied it to the explicit requirements of JASTA, which applies *only* to aiding and abetting an “act of international terrorism,” which by definition “involve[s] violent acts or acts dangerous to human life.” 18 U.S.C. §§ 2331, 2332(d)(2). Thus, the Court concluded that to prove a JASTA claim against a bank, the plaintiff must show that the bank was “generally aware” of its role in an FTO’s “violent or life-endangering activities.” *Linde*, 882 F.3d at 329. Just last year, the Second Circuit adhered to the requirement that a defendant be “generally aware” of its role in violent or life-threatening terrorist activities. *See Siegel v. HSBC, N. Am. Holdings Inc.*, 933 F.3d 217, 224 (2d Cir. 2019). Judge Cogan’s “application of *Halberstam*” disregards the need for a JASTA plaintiff to show more than that an alleged aider and abettor provided some assistance to an FTO. *Henkin*, 2020 WL 6143654 at \*7. And in “[a]nalogizing [the] case” to *Halberstam*, Judge Cogan paid no heed to the fact that the aider and abettor in *Halberstam* had a direct relationship with the principal and knowingly played a role in his illicit property crimes. *Id.* The *Henkin* decision relies upon an erroneous reading of the D.C. Circuit’s decision in *Halberstam* to rewrite the statement of the *mens rea* needed for a JASTA claim that the Second Circuit established in *Linde* and *Siegel*.

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